

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RAUL CONTRERAS,

Petitioner,

Civil No. 2:23-CV-10703

HONORABLE MATTHEW F. LEITMAN

v.

MICHAEL BOUCHARD,

Respondent.

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**OPINION AND ORDER: (1) VACATING THE ORIGINAL ORDER OF RESPONSIVE PLEADING (ECF No. 4), (2) DIRECTING THAT THE PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1) BE SERVED UPON THE OAKLAND COUNTY SHERIFF, THE OAKLAND COUNTY PROSECUTOR, AND THE OAKLAND COUNTY CORPORATION COUNSEL, AND (3) DIRECTING RESPONDENT TO FILE AN ANSWER AND THE RULE 5 MATERIALS**

Petitioner is pre-trial detainee incarcerated at the Oakland County Jail in Pontiac, Michigan, who is awaiting trial in the Oakland County Circuit Court on pending felony charges. Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, claiming that his right to a speedy trial is being violated because he has awaited 36 months to be brought to trial.

This Court signed an order of responsive pleadings directing the Michigan Attorney General and the Michigan Department of Corrections to respond to the petition. (ECF No. 4). This Court now vacates that order and issues this order directing that the case be served on the Oakland County Sheriff, the Oakland County Prosecutor, and the Oakland County Corporation Counsel and directing that an answer be filed in this case.<sup>1</sup>

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<sup>1</sup> The Court is directing that this order be served on the Oakland County Prosecutor and the Oakland County Corporation Counsel because it is not clear which office would want to respond to the petition. Corporation Counsel represents the Sheriff in civil matters but because this case involves a pending criminal case brought by the Oakland County Prosecutor's Office, that office may wish to respond.

The proper respondent in a habeas case is the custodian of the facility where a habeas petitioner is currently incarcerated. *See Edwards Johns*, 450 F. Supp. 2d 755, 757 (E.D. Mich. 2006); *see also* Rule 2(a), 28 foll. U.S.C. § 2254. The Oakland County Sheriff is the proper respondent because petitioner is a pre-trial detainee challenging his pending criminal charges. *See Libby v. Lindsey*, No. 18-13842, 2019 WL 5552347, at \*1, n.1 (E.D. Mich. Oct. 28, 2019). The Oakland County Sheriff and his representatives should be the proper respondent to answer the current petition. This Court will notify the proper respondent and give him an opportunity to be heard. *McMaster v. City of Troy*, 911 F.2d 733, 1990 WL 116540, \*4 (6th Cir. Aug. 13, 1990)(table decision)(citing to *Reimnitz v. State's Attorney*, 761 F.2d 405, 409 (7th Cir. 1985)).

Accordingly, the original order of responsive pleading (ECF No. 1) is vacated. The Clerk of the Court shall serve a copy of the petition for writ of habeas corpus (ECF No. 1) and a copy of this Order on Respondent Oakland County Sheriff, the Oakland County Prosecutor, and the Oakland County Corporation Counsel as provided in Rule 4 of the Rules Governing § 2254 Cases, Rule 4. *See Coffee v. Harry*, No. 04-71209, 2005 WL 1861943, \*2 (E.D. Mich. Aug. 2, 2005). Respondent shall file an answer to the petition within forty five days of the Court's order. *See Erwin v. Elo*, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243. Respondent shall provide any Rule 5 materials with the answer. *See Griffin v. Rogers*, 308 F.3d 647, 653 (6th Cir. 2002); Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254. Petitioner has forty five days from the receipt of the answer to file a reply brief, if he so chooses. *See* Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

### **ORDER**

**IT IS ORDERED THAT:**

(1) The order of responsive pleadings dated April 17 2023 (ECF No. 4) is **VACATED**.

(2) The Clerk of the Court shall serve a copy of the petition for writ of habeas corpus (ECF No. 1) and a copy of this Order on Respondent Oakland County Sheriff, the Oakland County Prosecutor, and the Oakland County Corporation Counsel.

(3) Respondent shall file an answer and the Rule 5 materials within **forty five (45) days** of the date of this order or show cause why they are unable to comply with the order.

(4) Petitioner shall have **forty five days** from the date that he receives the answer to file a reply brief.

S/David. R. Grand  
DAVID R. GRAND  
UNITED STATES MAGISTRATE JUDGE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail.

Dated: 4/20/2023

s/Tracy Thompson  
Deputy Clerk